IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.2801 OF 2006

Nitan Chhatwal & Ors. ...Petitioner.
Vs.
The State of Maharashtra & Ors. ...Respondents.
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Mr.Shekhar Shetye with Mr. P.B. Amin& V. P. Amin i/b. B. Amin & Co. for the Petitioners.
Mr. K. R. Belosey, AGP for the Respondents.
Mr. Y.S. Jahagirdar, Senior Advocate with Ms. K. TJ. Hakani and Ms. Sarika Mehra for the Intervenor.

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CORAM : DR.D.Y.CHANDRACHUD, J.

November 13, 2006.

P.C.

An order has been passed by the Deputy Registrar, Co-operative Societies, K-West Ward, Mumbai, on 3rd October 2006, appointing an Administrator in exercise of the powers conferred by Section 77-A(1-b) of the Maharashtra Co-operative Societies' Act, 1960. The reason why the Administrator was appointed was that all the existing members of the Managing Committee had failed to execute a bond within fifteen days of the assumption of office and under Section 73(1AB) they are deemed to have vacated office as members of the Committee.

The provisions of Section 73(1AB) have been held to be mandatory in a judgment of a Division Bench of this Court consisting of the Hon'ble Mr.Justice R.M. Lodha and Mr. Justice S.A. Bobde, delivered on 15th September 2006. While confirming the order of a Learned Single Judge dated 6th July 2006, the Division Bench in the case of **Assissi Co-operative Housing Society Ltd. vs. The State of Maharashtra** (Appeal No.683 of 2006 in Writ Petition 501 of 2005) held as follows :

> "Relying on Section 73 FF, the counsel for the Appellants urged that the provision contained in Section 73(1AB) that every member of the committee shall execute a bond within 15 days on his assuming office and if he fails to execute such bond within the said period, he shall be deemed to have vacated his office as member of the committee, is not mandatory. According to him the said provisions is directory. We do not think so. The provision contained in Section 73FF, requiring every member of the committee to execute a bond within 15 days on his assuming the office, is salutary. That the said provision is imperative in nature is seen from the fact that the default in not executing the bond within 15 days on his assuming the office, results in vacation of the office by the member of the committee by operation of law. The provision provides for consequence for non-compliance and, therefore, is mandatory in nature."

There is a failure of the Managing Committee to execute the required bond within fifteen days from the assumption of the office.

The provision having been held to be mandatory in character, the Managing Committee is deemed to have vacated office. The Deputy Registrar was, therefore, justified in holding that a case has been made out for the appointment of an Administrator since there could not be a vacuum in the management of the Co-operative Society. The Deputy Registrar has furnished cogent reasons or dispensing with a notice since within the meaning of the second proviso, immediate action was necessary. The immediacy arose out of the fact that by operation of law, the entire committee is deemed to have vacated office.

However, at the hearing of the petition, it is urged that the Registrar is also empowered under Section 77A to appoint a Committee consisting of not more than three members of the Society to manage the affairs of the Society till a new Committee enters upon office. This course of action was not opposed on behalf of the Intervener who has filed Chamber Summons No.319 of 2006. The intervener is the complainant at whose behest the order appointing an Administrator was passed. Mr.K. R. Belosey, AGP has stated that in terms of the provisions contained in Section 77A, the Deputy Registrar shall issue a corrigendum appointing,

instead and in place of the Administrator, a Committee of three members of the Society, other than the members of the erstwhile Managing Committee who are deemed to have vacated office to manage the affairs of the Society till the new Committee enters upon office. The statement is accepted. Having regard to the background of the matter, the Committee shall also not consist of the intervener before the Court with whom certain disputes are pending before the Co-operative Court.

The Committee thus appointed shall take steps to hold fresh elections and complete the election process within a period of two months after the date of the issuance of a corrigendum by the Deputy Registrar. The elections shall be held under the supervision of an officer to be nominated by the Deputy Registrar. Until the elections are held, the Committee shall not take any policy decision.

In view of the present order, Counsel appearing on behalf of the Intervener states that the intervener will withdraw Case No.CC-IV/323 of 2006 filed before the Co-operative Court.

The Petition is accordingly disposed of. No order as to costs.

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